

#### Members

Rep. Jonathan Weinzapfel, Chair  
Rep. Ed Mahern  
Rep. Ralph Foley  
Sen. Joseph Zakas  
Sen. Connie Lawson  
Sen. Rose Ann Antich  
Mr. James W. Martin  
Ms. Cynthia Boll  
Mr. Vincent Heiny  
Mr. Robert Christopher  
Ms. Janet Ellis  
Mr. Terry Harris  
Ms. Diane Bender  
Mr. John Chappell  
Mr. William Holwager



## PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

### MEETING MINUTES<sup>1</sup>

Meeting Date: August 29, 2000  
Meeting Time: 1:00 P.M.  
Meeting Place: State House, 200 W. Washington St.,  
Room 125  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Rep. Jonathan Weinzapfel, Chair; Rep. Ed Mahern; Rep. Ralph Foley; Sen. Joseph Zakas; Mr. James W. Martin; Ms. Cynthia Boll; Ms. Diane Bender; Mr. William Holwager.

**Members Absent:** Sen. Connie Lawson; Sen. Rose Ann Antich; Mr. Vincent Heiny; Mr. Robert Christopher; Ms. Janet Ellis; Mr. Terry Harris; Mr. John Chappell.

### Introduction of Members

Rep. Weinzapfel called the meeting to order and asked Committee members to introduce themselves. After introductions, Rep. Weinzapfel explained that because there was not a quorum present, no official business could be conducted; however, the Commission members present could discuss the items on the agenda.

### 2000 Session Achievements

Rep. Weinzapfel asked Sen. Zakas and Rep. Mahern to discuss HEA 1125-00 which was recommended to the General Assembly by the Commission during the last session. They indicated that the bill which applied portions of the trust code to charitable trusts included minor definitional and clarification changes.

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<sup>1</sup>Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## **Legislative Strategy for 2001**

Rep. Weinzapfel directed the Commission to discuss the preliminary drafts which had been prepared as possible recommendations by the Commission for the upcoming 2001 session of the General Assembly.

PD 3095 Applicability of the dead man's statute. This draft concerns the applicability of the dead man's statute. Commission member Jim Martin explained that this proposal would result in the dead man's statute not applying to: 1) a proceeding to contest the validity of a will or a trust, and 2) to a custodian or other qualified witness to the extent that the witness seeks to introduce evidence admissible under the hearsay exception for records of a regularly conducted business activity.

Mr. Jeff Kolb, representing the Probate Section of the Indiana State Bar Association, stated that judges were in favor of this proposal.

PD 3096 Power of Attorney Accounting. Mr. Martin explained that the proposal would allow a court to order an attorney in fact to render a written accounting.

Commission member Rep. Ralph Foley introduced Roger Coffin, an elder law attorney. Mr. Coffin described a problem concerning some banks, insurance companies, and stockbrokers that do not recognize Indiana power of attorneys in certain circumstances.

Mr. Kolb cautioned the Commission concerning the use of a short form power of attorney. He said that some 20 to 25 states use such a form, but that it can lead to indiscriminate use of the form.

Commission member William Holwager suggested that sanctions for failure to recognize a power of attorney might be appropriate.

Commission member Cynthia Boll suggested that the power of attorney include health care powers and that sanctions be considered.

Mr. Kolb indicated that he thought the health care issue is covered in the health care law. He also indicated that the State Bar Association would look at these issues and report back to the Commission.

PD 3097 Inheritance Tax Affidavit. Mr. Martin explained that this proposal has been considered for at least three years. It is designed to speed up the probate process. After discussion, the Commission decided that Section 3 of the draft was not necessary and instructed Anne Haley, attorney for the Commission, to prepare a draft which makes that change.

PD 3098 Inheritance, estate, and transfer tax due dates. Responding to a question from Chairman Weinzapfel, Mr. Kolb explained that Judge Dieter had suggested these changes five years ago to speed up estate administration. Mr. Martin and Rep. Foley both indicated that these changes are good ideas.

PD 3099 Construction of nonprobate transfers. It was explained that the purpose of this bill is to add rules of construction similar to those found in the Probate Code to the Trust Code.

PD 3100 Various probate and trust matters. This proposal would increase the allowance for a surviving spouse from \$15,000 to \$25,000. Rep. Foley expressed concern that this provision be given a hearing. Chairman Weinzapfel suggested leaving the increase in amount in the

proposal and then removing it during the session if it became a problem.

PD 3101 Probate notices and hearings. Mr. Kolb explained that this draft was included in Judge Dieter's original proposal.

PD 3104 Investments by fiduciaries. Mr. Martin explained that under current law, a trustee is limited in the amount which can be used to pay insurance premiums. This proposal would allow flexibility subject to limitations imposed by a court or by the trust instrument.

PD 3106 Various probate deadlines. Mr. Kolb explained that this proposal is designed to shorten the process by speeding up administration. Responding to a question from the Chair, Mr. Kolb indicated that he was not aware of any feedback from creditors concerning this proposal.

PD 3107 Valuation for inheritance tax purposes. This proposal provides that the finally determined federal estate tax value of a property interest is presumed to be the fair market value of the property interest for Indiana inheritance tax purposes. Mr. Kolb said that he felt this provision could save inheritance tax in some situations.

PD 3108 Inheritance tax deduction for family business. The Chair said that he had spoken with Ways and Means Chairman Bauer and was hopeful that this proposal would receive a hearing during the upcoming session.

It was explained that this proposal would allow a deduction from the value of property interests transferred by a resident decedent equal to the amount of the decedent's interest in a qualified family owned business deducted from the decedent's gross estate for federal estate tax purposed under Section 2057 of the Internal Revenue Code.

It was suggested that an additional section be added to the draft to deal with non- probate transfers. Ms. Haley was instructed to prepare a preliminary draft which would include this change.

Mr. Holwager pointed out that, since this provision would only apply to a limited number of estates, it was providing tax relief to only the wealthiest of Hoosier families. Mr. Martin said that it was designed to assist closely held businesses and allow businesses to stay within families.

Mr. Holwager suggested that it might be a good idea to wait for significant changes at the federal level before making state changes. Mr. Kolb pointed out that changes occur at the federal level on a regular basis. He stated that this proposal contains targeted tax relief for small family businesses.

## **Other Business**

Repeal of inheritance tax. Chairman Weinzapfel requested that the Commission discuss the issue of the repeal of the Indiana inheritance tax. He referred to SB 126-00 which would have provided for the repeal. The fiscal impact was estimated to be \$112 million per year.

Mr. Kolb described situations where Indiana residents have changed their residence to the State of Florida so that they can avoid the inheritance tax. Mr. Martin indicated that the Probate Code Section of the Indiana State Bar Association is in favor of the repeal of the tax.

During discussion about the fiscal impact, Jim Mundt, fiscal analyst for the Commission, noted that the amount of revenue generated by this tax has increased from about \$60 million per year to \$140 million per year over the last 15 years.

Rep. Foley pointed out that the structure under current law which provides a \$100,000 exemption for Class A transferees but only a \$500 exemption for Class B transferees can lead to an unfair result for blended families.

Legislative Package. After discussion, the Commission agreed that an omnibus bill which includes the proposals without a fiscal impact would be the most effective legislative approach. Chairman Weinzapfel suggested that Commission members make themselves available to appear at committee meetings during the session.

Uniform Principal and Income Act, SB 413-00. There was a brief discussion concerning this proposal which adopts the Uniform Principal and Income Act, makes conforming changes, and repeals superseded statutes.

George B. Jewell, Renaissance, Inc., addressed the Commission concerning his opposition to the repeal of IC 30-4-5-5 of the Indiana Principal and Income Act which would occur if the Uniform Principal and Income Act were adopted in the form presented in SB 413-00. He noted that this section is vital to the use of annuity contracts to defer and control income flow in a Net Income with Make-up Charitable Remainder Unitrust. Mr. Jewell and Mr. Kolb stated that they would provide appropriate language which could be used to address this situation.

### **Adjournment**

Chairman Weinzapfel stated that another meeting was needed to approve changes to the legislative proposals. The members present agreed that the next meeting would be held on Monday, September 25, 2000, at 1:00 p.m. subject to the assurance that enough members would be in attendance for a quorum. There being no further business, the meeting was adjourned at 3:45 p.m.